IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2807 OF 2006

Vishwanath Sitaram Jadhav & Ors. ..Petitioners.

Vs.

Sushila wd/o Ganpat Mahajan & Ors. ..Respondents.

...

Mr. A.G. Toraskar for the Petitioners.

CORAM: DR. D.Y. CHANDRACHUD, J.

13th June, 2006.

P.C. :

1. The concurrent finding that has been recorded in the present case is that the premises which formed the subject matter of the suit for eviction are situated on Government land. No permission had been obtained of the Government or of the Municipal Corporation for carrying out construction. The Small Causes Court held that by virtue of the provisions of Section 4 of the the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, it had no jurisdiction. Sections 4(1) and 4(4)(a) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 provide as follows :

"4(1) This Act shall not apply to any premises belonging

> to the Government or a local authority or apply as against the Government to any tenancy (licence) or other like relationship created by a grant from (or a licence given by) the Government in respect of premises (requisitioned, or taken on lease or on licence) by the Government, including any premises taken on behalf of the Government on the basis of tenancy (or of licence or other like relationship by, or in the name of any officer subordinate to the Government authorised in this behalf;) but it shall apply in respect of (premises let, or given on licence, to) the Government or a local authority (or taken on behalf of the Government on such basis by, or in the name of, such officer)."
>
> 4(4)(a) The expression "premises belonging to the Government or a local authority" in sub-section (1) shall notwithstanding anything contained in the said sub-section or in any judgment, decree or order of a Court, not include a building erected or any land held by any person from the Government or a local authority under an agreement, lease (licence) or other grant, although having regard to the provisions of such agreement, lease (licence) or grant the building so erected may belong or continue to belong to the Government or the local authority, as the case may be; and"

These provisions came up for consideration before a Division Bench of this Court presided over by Chief Justice M.C. Chagla in **Ram Bhagwandas v. Municipal Corporation of the City of Bombay**[1]. The Division Bench held that where a building is erected by a lessee not pursuant to and not under any agreement with the Municipality, the case would not fall under Section 4(4)(a).

1 AIR 1956 Bom. 364.

In **Nagji Vallabhji and Company v. Meghji Vijpar and Co.**[2], the Supreme Court has held that a plain reading of Section 4(1) of the Bombay Rent Act would show that the provisions of the Act are not applicable to the premises belonging to the Government or a local authority. However, sub section 4(a) only takes out from the scope of the exemption conferred by Section 4(1) a building erected on any land held by any person from the Government or a local authority under an agreement, lease, licence or other grant, although having regard to the provisions of such agreement, lease, licence or grant the building so erected may belong or continue to belong to the Government or a local authority, as the case may be. The Supreme Court held thus :

> "The plain reading of sub-section (1) of Section 4 makes it clear that the provisions of the Bombay Rent Act are not applicable to premises belonging to the Government or a local authority. Sub-section (4)(a) only takes out from the scope of the exemption conferred by Section 4 (1) "a building erected on any land held by any person from the Government or a local authority under an agreement, lease, licence or other grant, although having regard to the provisions of such agreement, lease, licence or grant the building so erected may belong or continue to belong to the Government or the local authority, as the case may be.""

2 AIR 1988 SC 1313.

2. In **Maneklal and Sons v. The Trustees of Port of Bombay**[3], the Supreme Court held that the Act would not apply to the premises which belong to the Government or a local authority. The Court noted that in that case the land belonged to the local authority and the structures were put up not under any building lease and hence such protection could not be claimed in respect of these premises. All these decisions have been adverted to in a judgment of a learned Single Judge of this Court in **Zunshi Bhanu Yadav v. Tukaram Raghoo Chavan**[4] (1993 Mh. L.J. 859) in which it has been held thus:

> "On proper construction of the aforesaid two sub-sections, it would appear that section 4(1) contains a general provision whereas section 4(4)(a) carves out an exception. The exception which is carved out in section 4(4)(a) is in respect of premises belonging to Government or local authority which is described in section 4(1). If the said premises qualify the test laid down under section 4(4)(a) namely that the building is erected on the land held by any person from the Government or local authority under an agreement, the said exception would enure to the benefit of the tenant irrespective of whether the building so erected may belong to the Government, Local Authority or to the person who has constructed the same. .... In my view before the provisions of section 4(4)(a) can be made applicable the premises should satisfy a dual test. The land must be held from the Government or the Local

3AIR 1988 SC 832

4 1993 Mh. L.J. 859

> Authority under a lease and the lessee under the terms of the lease should have constructed and put up the premises. It is only after these two requirements are satisfied that section 4(4)(a) can come into play and it would make no difference whether under the terms of the lease the structure vests in the lessee or the Government or Local Authority. In my view, the immunity which is sought to be granted by section 4(1) in the matter of applicability of the Rent Act is qua the premises and not the parties who have interest in it."

3. In so far as the facts of the present case are concerned, the Petitioner who deposed in support of his case admitted in the course of his cross examination that the area in which the construction had been carried out is situated at Golibar Maidan. Though the Petitioner claimed that he was unaware as to whether the plot was owned by the Central Government, he admitted in terms that the plot was one on which 'rifle training' for Government Officers was carried on. The Petitioner admitted that he had not obtained any permission either from the Municipal Corporation or from the owner for carrying out construction, whoever the owner may be. The Petitioner further admitted that the land was comprised in City Survey No.75 which corresponded to the area of Golibar Maidan at Ghatkopar, Mumbai. The Defendant's witness in the course of his examination-in-chief also stated that the area

wherein the premises were situated is Golibar Maidan and she further deposed that the place is owned by the Government. In view of the evidence as it has emerged on the record, it cannot be disputed that the structure is situated on land belonging to the Government. The provisions of Section 4(1) therefore clearly exclude the application of the Rent Act. The exception carved out by Section 4 (4)(a) will come into operation where a structure is erected on any land held by a person from Government or local authority under an agreement, lease, licence or other grant. The requirement of Section 4(4)(a) has not been fulfilled since the Petitioner during the course of his cross examination has admitted that he had not applied for permission of the owner. In the circumstances, the Learned Trial Judge and the Appellate Bench of the Court of Small Causes have not committed any error in holding that the suit was not maintainable. There is no merit in the Petition which is accordingly dismissed.